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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------|-------------|----------------------|-----------------------|------------------|
| 10/028,752 | 12/20/2001 | David W. Koenig | KCC 4742 (14, 442A) | 2567 |
| 321 | 7590 | 07/02/2004 | EXAMINER | |
| SENNIGER POWERS LEAVITT AND ROEDEL | | | ANDERSON, CATHARINE L | |
| ONE METROPOLITAN SQUARE | | | ART UNIT | |
| 16TH FLOOR | | | PAPER NUMBER | |
| ST LOUIS, MO 63102 | | | 3761 | |

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,752

Applicant(s)

KOENIG ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 12-17, 19-22, 24-26, 28-31, 33-37 and 39-41 is/are rejected.
- 7) ☒ Claim(s) 2-11, 18, 23, 27, 32, 38 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 15 April 2004 with respect to the rejection(s) of claim(s) 1, 12-18, 24-27, and 33-42 under 25 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Haynes et al. (6,686,303).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 12-17, 24-26, and 33-37 are rejected under 35 U.S.C. 103(a) as being obvious over Haynes et al. (6,686,303).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a

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showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

With respect to claim 1, Haynes discloses a nonwoven web for use in an absorbent article, as described in column 2, lines 25-28, but remains silent as to the placement of the web within an absorbent article. The web comprises a yucca species, as disclosed in column 9, line 41. The web further comprises a mixture including as much as 60% of a superabsorbent material, as disclosed in column 11, lines 37-41. It is well-known in the art that webs comprising a substantial amount of superabsorbent material are placed within the absorbent article to act as storage or absorptive layers. It would therefore be obvious to one of ordinary skill in the art at the time of invention to place the web of Haynes between the permeable liner and outer cover of an absorbent article, since it is well-known in the art that superabsorbent comprising webs are located between the permeable liner and outer cover of absorbent articles.

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With respect to claim 12, the web comprises superabsorbent material, and therefore functions as an absorbent body.

With respect to claim 13, the yucca species is held within the web between its outer faces, as disclosed in column 9, lines 16-19.

With respect to claim 14, the yucca species is applied to the entire web, including its outer faces.

With respect to claims 15-17, the composition is defined as consisting of yucca, and therefore comprises 100%, or greater than 0.01% by weight of yucca.

With respect to claim 24, the web, as an absorbent body, is positioned between the liner and the outer cover, and comprises a composition consisting of yucca.

With respect to claims 25 and 26, the composition is defined as consisting of yucca, and therefore comprises 100%, or greater than 0.01% by weight of yucca.

With respect to claims 33 and 34, the absorbent article is a diaper or infant care product, as disclosed in column 13, lines 62-66.

With respect to claims 35-37, the application of the diaper comprises the method of inhibiting production of ammonia by applying a composition including yucca.

Claims 19-22, 28-31, and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes et al. (6,686,303) as applied to claims 1, 12, and 35, and further in view of Henderson (6,282,265).

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Haynes discloses all aspects of the claimed invention with the exception of the yucca being *Yucca schidigera*. Henderson discloses the use of yucca extract for the acceleration of metabolism, and the particularly preferred yucca extract is *Yucca schidigera*, as described in column 1, lines 33-36. It would have been obvious to one of ordinary skill in the art at the time of invention to have the yucca of Haynes be *Yucca schidigera*, as taught by Henderson, in order to provide accelerated bacterial metabolism in organic waste.

Allowable Subject Matter

Claims 2-11, 18, 23, 27, 32, 38, and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CUM

cla
June 28, 2004
JOHN S. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700